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80-1742

No. 80

IN THE

Supreme Court of the United States

October Term, 1980

THE BALTIMORE AND OHIO RAILROAD CO.,
Petitioner

vs.

R. J. DICKEY COMPANY, INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Does the federal common law of nuisance permit the owner of an onshore facility who cleans up a prohibited oil discharge pursuant to the Federal Water Pollution Control Act to recover all or part of its reasonable expense from a private party whose negligent acts and omissions caused the discharge?

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OPINIONS BELOW

The Court of Appeals for the Third Circuit issued a Judgment Order, without Opinion, dated December 4, 1980. This Order appears as Appendix B. The Court of Appeals issued an Order denying rehearing, also without Opinion, dated January 15, 1981. That Order appears as Appendix C. The Opinion of the U. S. District Court for the Western District of Pennsylvania, not reported, appears in Appendix A.

JURISDICTION

The Court of Appeals for the Third Circuit issued an Order on December 4, 1980 affirming the judgment of the District Court. The Court of Appeals denied Petitioner's Petition for Rehearing by Order dated January 15, 1981. This Petition for Certiorari was filed within ninety (90) days of the entry of the Order denying rehearing. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The Federal Water Pollution Control Act of 1948, as amended, 33 U.S.C. §1251 et seq. (hereinafter referred to as FWPCA), will be generally referred to. Portions of the following sections of that Act which are of particular relevance are as follows:

33 U.S.C. §1251 (a) provides:

> "(a) The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's water. . . ."

33 U.S.C. §1321 (i) provides:

> "(i) (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of War, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing causes. . . ."

The full text of 33 U.S.C. §§1251 and 1321 appears as Appendix G.

STATEMENT OF THE CASE

This case arises from Petitioner's clean-up of a prohibited discharge of "oil" pursuant to the FWPCA. Petitioner, an interstate carrier by railroad, owned and operated a diesel fuel storage and locomotive fueling station near the Monongahela River at Pittsburgh, Pennsylvania. This station constituted an "onshore facility" under the FWPCA, 33 U.S.C. §1321. On April 9, 1976, approximately 155,022 gallons of diesel fuel was discharged from Petitioner's storage tank into the Monongahela River. In accordance with its responsibilities under 33 U.S.C. §1321(b)(3) and §1321(f)(2) Petitioner immediately undertook to clean up the diesel fuel discharge utilizing its own employees and an outside contractor who specialized in such projects. Petitioner spend $357,444.30 in the clean-up effort.

Respondent was a plumbing contractor engaged in performing alterations to Petitioner's facility on the date of the discharge. Petitioner brought this action claiming that the discharge resulted from the negligent acts and omissions of Respondent's employees. Petitioner's Complaint alleged Respondent's negligence and also raised an indemnity clause contained in the contract between the parties as a basis for recovery. These theories of liability were entertained by the District Court based on diversity jurisdiction. 28 U.S.C. §1332. Additionally, at Pretrial proceedings and throughout the trial counsel for Petitioner asserted a separate theory of liability against Respondent for those damages representing clean-up costs arising from Petitioner's fulfilling its responsibilities under the FWPCA. This latter theory of liability invokes federal question jurisdiction. 28 U.S.C. §1331. The negligence and contractual liability theories also sought damages for loss of diesel fuel and for the fine assessed against Petitioner by the

United States Coast Guard pursuant to 33 U.S.C. §1321(b)(6).

At the first trial of this case the jury returned a verdict in favor of Petitioner awarding it damages for the cost of clean-up, loss of diesel fuel and the statutory fine. (The amount allocated to each damage category was stated separately in Answers to Special Interrogatories.) By Answers to the Special Interrogatories on the verdict sheet (Appendix D) the jury specifically found that Respondent had been negligent and Petitioner not negligent. The District Court, however, granted a new trial on the grounds that its instruction that Petitioner might recover even if found to be negligent had been erroneous. At the new trial a second jury returned a general verdict in favor of Respondent. Special interrogatories were not utilized. At the second trial the jury was instructed (in accordance with the Pennsylvania common law of negligence as of April 9, 1976) that any negligence by Petitioner would bar recovery.

Petitioner took a timely appeal to the United States Court of Appeals for the Third Circuit. Petitioner's Appeal contended that: (1) the District Court's original jury instruction was correct with respect to the contractual theory of liability; (2) the District Court's original jury instruction was correct with respect to the FWPCA-related theory of liability; and (3) any error in the jury instruction was totally harmless in view of the first jury's finding that Petitioner had not been negligent. The Court of Appeals for the Third Circuit affirmed the judgment of the District Court by Order dated December 4, 1980. Petitioner's Petition for Rehearing and for Rehearing en banc was denied by Order dated January 15, 1981. Both of the Third Circuit Orders were issued without Opinion.

ARGUMENT

The owner of an onshore facility who cleans up a prohibited oil discharge pursuant to the Federal Water Pollution Control Act possesses a federal common law right to recover its reasonable clean-up expenses from a third party whose negligent acts and omissions caused or contributed to the discharge.

There is a federal common law of nuisance. *Illinois v. Milwaukee,* 406 U.S. 91, 92 S. Ct. 1385 (1972). The federal common law of nuisance is especially applicable to pollution of interstate and navigable waters of the United States. *Illinois v. Milwaukee, supra, Illinois v. Outboard Marine Corp.,* 619 F.2d 623 (7th Cir. 1980). Petitioner asks this Court to take judicial notice of the fact that the Monongahela River, the body of water from which Petitioner removed the discharged diesel fuel, is both interstate (with head waters in West Virginia, flowing thence into Pennsylvania) and navigable.

The federal common law of nuisance "fills the interstices of the [Federal Water Pollution Control] Act." *Illinois v. Outboard Marine Corp., supra,* 619 F.2d 626. In *Illinois v. Outboard Marine Corp.* the Court of Appeals for the Seventh Circuit held that federal common law of nuisance served to effectuate the goals of the FWPCA with regard to an in-state pollution source even if no interstate effects were asserted by the Plaintiff.

"The objective of [the FWPCA] is to restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §1251. In order to attain this objective the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, 86 Stat. 862 incorporated the provisions of the Water Quality Improvement Act of 1970, Pub. L. 91-224, 84 Stat. 91,

prohibiting discharge of "oil" (including diesel fuel) into the navigable waters of the United States and establishing various liability provisions for such discharges. 33 U.S.C. §1321. Petitioner's prompt action in undertaking clean-up of the subject diesel fuel discharge, although not specifically mandated by the FWPCA, is clearly contemplated by 33 U.S.C. §1321(i) "Recovery of removal costs", which permits the owner or operator of an onshore facility to recover from the United States Government reasonable costs of removing oil from navigable waters "[u]pon establishing . . . that such discharge was caused solely by (A) an Act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing causes."

Proof by the owner or operator of an onshore facility that "the foregoing causes" were the *sole* cause of a prohibited discharge also serves as the basis for alternative relief: (1) by providing a defense to an action brought by the United States Government for removal costs, 33 U.S.C. §1321(f)(2), or (2) by granting the owner or operator of the onshore facility subrogation to the rights of the United States Government to recover removal costs against third parties, 33 U.S.C. §1321(g). Unfortunately, the FWPCA contains no provision for direct recovery by owners or operators of onshore facilities (or by any of the other entities specifically subject to the FWPCA) against third parties for removal costs whether arising solely or partially by the act or omission of third parties. Petitioner contends that recognition of such a right is vital to accomplishing the pur-

poses of the FWPCA and that such a right arises out of the federal common law of nuisance.

The preceding statutory provisions for relief from liability or recovery from third parties are inadequate to accomplish the purposes of the FWPCA because they do not provide an adequate incentive for entities subject to the FWPCA to promptly clean-up discharges. Under the FWPCA these entities act at their peril. Recovery of clean-up costs depends on a subsequent adjudication of sole causation by a third party or force. Reimbursement from the United States Government pursuant to 33 U.S.C. §1321(i) will generally be a very remote possibility in view of the high standards of conduct which are applied to claimants seeking such reimbursement. *Chicago v. M.St. P. & P.R. v. United States,* 575 F.2d 839 (Ct. Cl. 1978) illustrates the stringency of those standards even though in that case the onshore facility owner was able to obtain reimbursement.

The alternative of relying on government agencies, rather than undertaking direct, independent clean-up operations is doubly undesirable. Such reliance inevitably entails administrative delay. Any delay carries the dual likelihood of higher eventual clean-up costs (conceivably exceeding the FWPCA's liability limitation) and, more importantly, a greater chance of irreparable harm to the quality of the Nation's waters. Finally, relegating those subject to the FWPCA to such remedies as may exist by virtue of state law produces a lack of uniformity in this area of vital federal concern as well as substantial injustice in cases such as the present one.

The foregoing considerations demonstrate the necessity of recognizing a federal common law right in

private parties to recover reasonable removal costs from third parties. It is particularly important that this right permit recovery via contribution in instances where facility owners or operators may not be entirely blameless since the FWPCA contains no such provision. An analogous right to contribution under federal common law was recognized by the Court of Appeals for the Third Circuit in favor of an employer who settled a Title VII action and then sought contribution from the co-defendant unions in *Glus v. G. C. Murphy Co.*, 629 F.2d 248 (3rd Cir. 1980). The Third Circuit's analysis of judicial recognition of a federal common law right to contribution applies *a fortiori* to the present case. In *Glus* the need to seek contribution was necessarily predicated upon the employer's own wrongful discriminatory conduct. Under the FWPCA strict liability may apply notwithstanding that the facility owner or operator's conduct was blameless since the burden of establishing causation by a third party or force is placed upon the owner or operator. Further support for Petitioner's contentions is found in the FWPCA's provision that:

> "The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance." 33 U.S.C. §1321(h).

Argument.

In *National Sea Clammers Ass'n. v. New York,* 616 F.2d 1222, 1233 (3rd Cir. 1980), appeal pending, the Court of Appeals for the Third Circuit held "that the common law nuisance remedy recognized in *Illinois v. City of Milwaukee* is available in suits by private parties." In *Complaint of Steuart Transp. Co.,* 435 F.Supp. 798 (E.D. Va. 1977) the District Court apparently would have permitted recovery on the contributory basis asserted herein by Petitioner. Under the facts of that case, however, the District Court found that the party claiming a right to contribution was the sole cause of the discharge in question.

If the right to contribution asserted by Petitioner exists, then the District Court's jury instruction at the first trial was correct with respect to the theory of liability based on this right. The jury was given instructions upon which to determine the negligence of both Petitioner and Respondent and answered a detailed set of Interrogatories in which it found no negligence by Petitioner. Although the instruction was arguably erroneous with respect to Petitioner's other theories of liability, the jury's finding of no negligence by Petitioner established beyond any doubt that such error was harmless and irrelevant. The District Court could simply have molded the jury's verdict accordingly had negligence been found on the part of the both parties. Therefore, the Court of Appeals for the Third Circuit should have reversed and remanded with instructions to enter judgment on the original verdict.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Court of Appeals for the Third Circuit.

Respectfully submitted,

GARY F. SHARLOCK, Esquire
DAVID P. HELWIG, Esquire
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Gary F. Sharlock, counsel for Petitioner do hereby certify that three copies of the within document have been served on Respondent by U. S. Mail, first class postage prepaid, sent on April 15, 1981 addressed to:

JOSEPH B. BAGLEY, Esq.
P.O. Box 10308
Pittsburgh, Pennsylvania 15234

/s/ Gary F. Sharlock

APPENDIX

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Plaintiff

vs.

R. J. DICKEY COMPANY, INC.,
Defendant

Civil Action No. 77-161 D

Memorandum

BARRON P. McCUNE, District Judge

Dated: March 20, 1980.

We consider the defendant's Motions for a New Trial and for Judgment n.o.v., following a jury verdict for plaintiff.

The plaintiff owns and operates a diesel fueling station located on the Monongahela River at its Glenwood Yards. In order to accomplish certain changes at the fueling station, plaintiff contracted with defendant, in writing, to make the changes. Defendant is a plumbing contractor. The contract contained the following clause:

> "Contractor hereby agrees to indemnify, protect and save harmless railroad from and against all loss of or damage to any property whatsoever, or injury to or death of any persons (including the parties hereto and their respective employees, agents or representatives) and all claims or demands therefor, resulting from any acts or omissions of said contractor, its agents or employees, in the execution of the work or in guarding the same."

Appendix A.

The work was undertaken and on the night of April 8, 1976, large quantities of oil escaped from the fueling station, ran down the bank and into the river, causing the intervention of the federal government and the attendant expense of cleaning up the river under government orders. There was a loss of a large quantity of oil and a civil penalty was assessed against the railroad as well. For the various losses to the railroad, the jury returned a verdict in the amount of $410,065.06. By answering interrogatories, the jury found that the contractor had been negligent and its negligence was a substantial cause of the accident. It also found that the railroad had not been negligent.

During trial there was evidence presented on the basis of which the jury would have been justified in finding both parties negligent. The fueling station consisted of a maze of various pipes, valves and outlets. The contract required a revamping of the system eliminating some underground lines and restoring the operation of a railroad car unloading system and the creation of a new tank truck unloading system. Certain overhead lines were to be installed. The testimony concerned the improper opening and closing of valves, lack of preparation and supervision, and the ignoring of obvious indications of dangers.

The court submitted the case to the jury on the theory of comparative negligence on the basis of the discussion in *Golmes v. Broadhurst,* 394 F.2d 465 (3d Cir. 1967).

In view of the action of the Court of Appeals in *Norfolk and Western Railway Company v. Hardinger Transfer Company, Inc.,* 558 F.2d 1028 (3d Cir. 1976), we

were in error in submitting the case on the theory of comparative negligence and a new trial must be granted.

We conclude that Pennsylvania law applies. In Pennsylvania an indemnitor can contract to be responsible for the negligence of the indemnitee, as well as his own negligence, but the contract must be clear and precise in this respect, *Pgh. Steel Co. v. Patterson-Emerson-Comstock, Inc.*, 404 Pa. 53 (1961). In the contract between the B. & O. Railroad and Dickey, the contractor agreed to be responsible for his own negligence only. It would appear at this time that the defendant's position is correct that the court must instruct the jury that contributory negligence is a bar to recovery by the Railroad, although comparative negligence seems to us a more equitable theory.

The defendant's Motion for Judgment n.o.v. must be denied. Although we might have disagreed with the jury when it found that plaintiff was not negligent, the finding of the jury should not be disturbed in this regard. Such a motion may be granted only when, without weighing the credibility of the evidence, there can be but one reasonable conclusion as to the proper judgment. Where there is conflicting evidence, a jury finding should generally not be disturbed and in considering the motion, the court must view the evidence in the light most favorable to the party who secured the verdict, *Fireman's Fund Insurance Company v. Videfreeze Corp.*, 540 F.2d 1171 (3d Cir. 1976).

An order follows.

BARRON P. MCCUNE
United States District Judge

cc: Counsel of record.
Dated: March 20, 1980.

Appendix A.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Plaintiff
vs.
R. J. DICKEY COMPANY, INC.,
Defendant

Civil Action No. 77-161 D

Order

AND NOW, March 20, 1980, the Motion for Judgment n.o.v. is denied. The Motion for New Trial is granted. This case will appear on the next civil jury trial list.

BARRON P. MCCUNE
United States District Judge

cc: Gary Sharlock, Esq.
2970 U.S. Steel Building
Pittsburgh, Pa. 15219

Joseph B. Bagley, Esq.
1224 Frick Building
Pittsburgh, Pa. 15219

Appendix B.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2042

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Appellant
vs.
R. J. DICKEY COMPANY, INC.

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 77-00161)

Submitted Under Third Circuit Rule 12(6)
December 4, 1980

Before: ALDISERT, HUNTER, and HIGGINBOTHAM,
Circuit Judges.

Judgment Order

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,
ALDISERT, J.
Circuit Judge

Attest:

M. Elizabeth Ferguson, Chief Deputy Clerk
Dated: December 4, 1980

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2042

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Appellant

vs.

R. J. DICKEY COMPANY, INC.
(W.D. Pa. Civil No. 77-00161)

Sur Petition For Rehearing

Present: SEITZ, *Chief Judge,* and ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM and SLOVITER, *Circuit Judges.*

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,
ALDISERT, J.
Circuit Judge

Dated: January 15, 1981

Appendix D.

(If the answer is NO, do not go to the next question. Skip directly to questions 6, 7, 8, and 9 and answer them. If the answer is YES, go to the next question).

4. Was the plaintiff's negligence a substantial cause of the oil spill? Answer YES or NO on the following line.

.....

(If the answer is NO, do no go to the next question. Skip directly to questions 6, 7, 8, and 9 and answer them. If the answer is YES, go to the next question).

5. In what proportion (stated in percentage) was each party responsible for the oil spill?

Defendant.....%.....
Plaintiff.....%.....

6. What are the Railroad's damages as to the loss of oil? (Stated in dollars).

$47,622.76

.....

7. What are the Railroad's damages as to the clean up of the river for which AMO was hired and paid. (Stated in dollars).

$327,865.75

.....

8. What are the Railroad's damages as to the Railroad's own expenses related to the clean up of the river? (Stated in dollars).

$29,576.52

.....

Appendix E.

9. What are the Railroad's damages as to the assessment which the Railroad paid? (Stated in dollars).

$5,000

.....

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Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Plaintiff
vs.
R. J. DICKEY COMPANY, INC.,
Defendant

Civil Action No. 77-161 D

Order

AND NOW, November 7, 1979, the verdict of the jury is molded in conformity with the answers of the jury to the questions posed and a verdict is entered for the

plaintiff and against the defendant for the sum of $410,065.06.

BARRON P. MCCUNE
United States District Judge

cc: Gary Sharlock, Esq.
2970 U.S. Steel Building
Pittsburgh, Pa. 15219

Joseph B. Bagley, Esq.
1224 Frick Building
Pittsburgh, Pa. 15219

Appendix F

UNITED STATES DISTRICT COURT
FOR THE WESTERB DUSTRUCT IF OEBBSTKVABUA [SIC]

Civil Action File No. 77-161

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Plaintiff
vs.
R. J. DICKEY COMPANY, INC.,
Defendant

} Judgment

Judgment On Jury Verdict

This action came on for trial before the Court and a jury, Honorable Barron P. McCune, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It Is Ordered and Adjudged that the Clerk enter Judgment in favor of the Defendant, R. J. DICKEY

COMPANY and against the Plaintiff, THE BALTIMORE AND OHIO RAILROAD COMPANY together with costs.

Judgment is hereby entered in accordance with the above verdict.

Dated at Pittsburgh, Pennsylvania, this 6th day of June, 1980.

GILBERT W. CONLEY
Clerk of Court

Appendix G

UNITED STATES CODE, TITLE 33

§1251. CONGRESSIONAL DECLARATION OF GOALS AND POLICY

(a) The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be

necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of

Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

June 30, 1948, c. 758, Title I, § 101, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 816, and amended Dec. 27, 1977 Pub.L. 95-217, §§ 5(a), 26(b), 91 Stat. 1567, 1575.

§ 1321. OIL AND HAZARDOUS SUBSTANCE LIABILITY

Definitions

(a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b) (2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea, is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.

(17) "Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; determination of removability; liability; penalties; civil actions; penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies

(b) (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

(2) (A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in

connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after November 2, 1978, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and

Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is dis-

charged in violation of paragraph (3) (i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) (A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such

charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46 of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed $250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the de-

fendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this title.

(E) Civil penalties shall not be assessed under both this section and section 1319 of this title for the same discharge.

Removal of discharged oil or hazardous substances; National Contingency Plan

(c)(1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conser-

vation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after October 18, 1972, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

Appendix G.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

Maritime disaster discharges

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purpose of subsection (f) of this section in the removal of oil or hazardous substance.

Judicial relief

(e) In addition to any other action taken by a State or local government, when the President deter-

mines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

Liability for actual costs of removal

(f)(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous

substances as cargo, $250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of

competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b) (3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a

facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

Third party liability

(g) Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) of this section for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under

this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C(negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the

United States can show that the discharge of oil or a hazardous substance in violation of subsection (b) (3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

Rights against third parties who caused or contributed to discharge

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

Recovery of removal costs

(i) (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God,

(B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k) of this section.

Regulations; penalty

(j) (1) Consistent with the National Contingency Plan required by subsection (c) (2) of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges or oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of subsection (b) of this section unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

Authorization of appropriations

(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

Appendix G.

Administration

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

Boarding and inspection of vessels; arrest; execution of warrants or other process

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

Jurisdiction

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i) (1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam,

and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected

(o) (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

Appendix G.

Financial responsibility

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator ownes, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after October 18, 1972, with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days

after October 18, 1972. Regulations necessary to implement this subsection shall be issued within six months after October 18, 1972.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 91 of Title 46 to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of

paragraph (1) of this subsection have been complied with.

Establishment of maximum limit of liability with respect to onshore or offshore facilities

(q) The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.

Liability limitations not to limit liability under other legislation

(r) Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

June 30, 1948, c. 758, Title III, § 311, as added Oct. 18, 1972, Pub.L. 92.500, § 2, 86 Stat. 862, and amended Dec. 28, 1973, Pub.L. 93-207, § 1(4), 87 Stat. 906; Dec. 27, 1977, Pub.L. 95-217, §§ 57, 58(a)-(g), (i), (k)-(m), 91 Stat. 1593-1596; Nov. 2, 1978, Pub.L. 95-576, § 1(b), 92 Stat. 2467.